



[Billing Code: 4710-25]

DEPARTMENT OF STATE

[Public Notice: 8785]

Bureau of Political-Military Affairs; Administrative Debarment of Carlos Dominguez, Elint, S.A., Spain Night Vision, S.A., and SNV, S.A. under the Arms Export Control Act and the International Traffic in Arms Regulations; Correction

ACTION: Notice; Correction.

SUMMARY: The Department of State published a Federal Register document on June 19, 2014, concerning the administrative debarment pursuant to Section 127.7(a) of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 to 130) of Carlos Dominguez (individually and in his capacity as principal of the following entities); Elint, S.A.; Spain Night Vision, S.A.; and SNV, S.A. (including successors, assignees, and aliases). The document contained an incorrect period of debarment. This document corrects document 2014-14152 by changing the period of debarment and the date after which the Department will consider reinstatement from June 4, 2014, to June 4, 2017.

DATES: EFFECTIVE DATE: June 4, 2014 (*Date of signature of the Order*)

FOR FURTHER INFORMATION CONTACT:

Sue Gainor, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 632-2798.

CORRECTION:

In the Federal Register of June 19, 2014, in FR Doc. 2014-14152, on page 35211, in the second column, correct lines 22 through 24 to read: “for a period of three years, until June 4, 2017;

reinstatement after June 4, 2017, is not automatic.” For clarity, the complete text including corrections is hereby reproduced in full, below.

The International Traffic in Arms Regulations ("ITAR"), the implementing regulations of Section 38 of the Arms Export Control Act, as amended, ("AECA") (22 U.S.C. 2778), regulate the export and temporary import of defense articles and defense services. Section 127.7(a) of the ITAR authorizes the Assistant Secretary of State for Political-Military Affairs to debar any person who has been found, pursuant to Part 128 of the ITAR, to have committed a violation of the AECA or the ITAR of such a character as to provide a reasonable basis for the Directorate of Defense Trade Controls to believe that the violator cannot be relied upon to comply with the AECA or ITAR in the future. Such debarment prohibits the subject from participating directly or indirectly in any activities that are subject to the ITAR.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see e.g., sections 120.1(c) and (d), 126.7, 127.1(d), and 127.11(a)). The Department of State applies a presumption of denial for licenses or other approvals involving such persons as described in ITAR Section 127.11.

Pursuant to Section 38 of the AECA and Section 128.3 of the ITAR, on February 14, 2014, the Department of State initiated administrative proceedings, by means of a charging letter, against Carlos Dominguez (individually and in his capacity as principal of the following entities); Elint, S.A.; Spain Night Vision, S.A.; and SNV, S.A. (including successors, assignees, and aliases) (Respondents) to impose debarment in accordance with Section 127.7 of the ITAR. (The United States Department of State, Docket # 14-DOS-0001). Respondents were charged with 366 violations related to the unauthorized re-export and retransfer of night vision devices and related technical data, conspiracy to and causing of the re-export and retransfer of defense

articles without authorization, the violation of terms and conditions of Department authorizations, the continued engagement in U.S. defense trade despite ineligibility, the knowing and willful causation and the commission of prohibited acts, and the falsification, misrepresentation and omission of material facts on an export control document, all in violation of Section 38 of the AECA and Section 127 of the ITAR.

Since at least 2008, Respondents have re-exported and retransferred hundreds of night vision devices in violation of Department authorizations and falsified export control documents. After multiple unfavorable responses to ‘Blue Lantern’ end-use inquiries and subsequent compliance reviews, DTCC notified Respondents Dominguez and Elint in September 2009 that they were ineligible to engage in defense trade. Shortly thereafter, Dominguez and Elint changed or established new business names and engaged third-party purchasers in order to conceal their activities and evade detection. Further re-exports and retransfers of previously exported defense articles continued under these new business names, in violation of the AECA and ITAR.

Due to Respondents’ failure to answer the charges as provided in Section 128.5(a) of the ITAR, the Department referred the case to an Administrative Law Judge for consideration, in accordance with Section 128.4 of the ITAR. Pursuant to Section 128.3 of the ITAR and the Default Order of the Administrative Law Judge, dated April 23, 2014, Respondents’ failure to answer the charges constituted an admission of the truth of the charges.

Section 128.4 of the ITAR provides for a respondent’s ability to petition to set aside defaults upon showing good cause; however, the filing of such a petition does not in any manner affect an order entered upon default and such order continues in full force and effect unless a further order is made modifying or terminating it.

On June 4, 2014, as the result of the established violations and pursuant to Section 127.7 of the ITAR, Carlos Dominguez (individually and in his capacity as principal of the following entities); Elint, S.A.; Spain Night Vision, S.A.; and SNV, S.A. (including successors, assignees, and aliases) were administratively debarred by the Assistant Secretary of State for Political-Military Affairs for a period of three years, until June 4, 2017; reinstatement after June 4, 2017, is not automatic. At the end of the debarment period, Respondents may apply for reinstatement. Until licensing privileges are reinstated, Carlos Dominguez (individually and in his capacity as principal of the following entities); Elint, S.A.; Spain Night Vision, S.A.; and SNV, S.A. (including successors, assignees, and aliases) will remain debarred. No civil penalties have been imposed at this time.

This notice is provided to make the public aware that the persons listed above are prohibited from participating directly or indirectly in any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR.

Further, pursuant to Section 120.1(d) of the ITAR, persons with knowledge that another person is ineligible must obtain authorization from the Directorate of Defense Trade Controls prior to, directly or indirectly and in any manner or capacity, applying for, obtaining, or using any export control document for such ineligible person, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing or participating in any manner in any transaction that may involve any defense article, which includes technical data, defense services, or brokering activities, where such ineligible person may obtain any benefit therefrom or have any direct or indirect interest therein.

Exceptions may be made to this denial policy on a case-by-case basis at the discretion of the Directorate of Defense Trade Controls. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and law enforcement concerns.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedures Act. Because the exercise of this foreign affairs function is highly discretionary, it is excluded from review under the Administrative Procedures Act.

June 23, 2014

Dated

Kenneth B. Handelman
Deputy Assistant Secretary for
Defense Trade Controls
Bureau of Political-Military Affairs
Department of State

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